

Retailers are prohibited from advertising or holding out that they will absorb the purchaser's Use Tax obligation. See 35 ILCS 105/7. (This is a GIL.)

April 23, 2007

Dear Xxxxx:

This letter is in response to your letter dated December 11, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I'm writing to you today to respectfully request your clarification on the following Illinois statute:

(35 ILCS 105/7) (from Ch. 120, par. 439.7) Sec. 7.

It is unlawful for any retailer to advertise or hold out or state to the public or to any purchaser, consumer or user, directly or indirectly, that the tax or any part thereof imposed by Section 3 hereof **will be assumed or absorbed by the retailer** or that it will not be added to the selling price of the property sold, or if added that it or any part thereof will be refunded other than when the retailer refunds the selling price and tax because of the merchandise's being returned to the retailer or other than when the retailer credits or refunds the tax to the purchaser to support a claim filed with the Department under the Retailers' Occupation Tax Act or under this Act. Any person violating any of the provisions of this Section within this State shall be guilty of a Class A misdemeanor.

(Source: P.A. 77*2830.)

Our interpretation of this statute has always been that our advertisements CANNOT specifically state that our customers will not be required to pay Illinois sales tax, regardless of any footnote disclaimer we might choose to include on our specific advertisement. Since we will never knowingly fail to comply with any existing statutes,

we have therefore carefully avoided using such verbiage in all of our advertisements. However, as in any competitive marketplace, every furniture retailer is seeking every possible advantage to increase market share. Enclosed is a competitor's recent advertisement that ran on December 2nd in the NEWSPAPER, which very clearly states that the customer will pay no sales tax ('No sales tax; no exceptions').

Can you tell us if our competitor's sales tax advertisement, with its related footnote disclaimer, is considered legal by the Illinois Department of Revenue? If it is, we would plan on utilizing the same type of advertisement in the future. If it isn't, what action is available to either you or us to prevent our competitors from continuing to publish such illegal ads?

Any clarification you could provide to me on this somewhat challenging issue would be greatly appreciated.

DEPARTMENT'S RESPONSE

As you know, Section 7 of the Use Tax Act, 35 ILCS 105/7, provides that it is unlawful for any retailer to advertise or hold out or state to the public or to any purchaser, consumer or user, directly or indirectly, that the tax or any part thereof imposed by Section 3 of the Use Tax Act will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold, or if added that it or any part thereof will be refunded other than when the retailer refunds the selling price and tax because of the merchandise's being returned to the retailer or other than when the retailer credits or refunds the tax to the purchaser to support a claim filed with the Department under the Retailers Occupation Tax Act or under the Use Tax Act. Any person violating any of these provisions within Illinois is guilty of a Class A misdemeanor.

An advertisement that states "NO SALES TAX NO EXCEPTIONS," despite the footnote in fine print, violates the provisions of Section 7. If the Department becomes aware of such advertisements, it generally contacts the retailer and advises it that such advertisement violates the law. If the retailer should continue such advertising after a warning, it would be referred to the proper authorities within the Department for further measures.

If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
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